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# Statement by the Certification Officer and Annexes

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IN THE EMPLOYMENT APPEAL TRIBUNAL

BETWEEN:

GOVERNMENT COMMUNICATIONS

STAFF FEDERATION

Appellant

- and -

CERTIFICATION OFFICER

Respondent

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STATEMENT BY THE CERTIFICATION OFFICER

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1. The Certification Officer is appointed under section 7(1) of the Employment Protection Act 1975 ("the 1975 Act"). His functions include maintaining a list of trade unions under section 7 of the Trade Union and Labour Relations Act 1974 and granting or refusing a listed trade union a certificate of independence under section 8 of the 1975 Act.

2. The Appellant ("the Federation") is a listed trade union, having been entered by the Certification Officer on the list of trade unions on 26 July 1985. On 26 May 1989 the Certification Officer received an application from the Federation for a certificate of independence. His decision to refuse a certificate was communicated to the Federation in a letter dated 15 December 1989 ("the decision letter"). What follows is a summary of background information available to the Certification Officer at the time of his decision.

**HISTORY**

3. On 25 January 1984 government statements were made in both Houses of Parliament concerning Government Communications Headquarters (GCHQ). It was explained that, in the interests of national security, employees of GCHQ would no longer be permitted to be members of existing trade unions but in future would be allowed to belong only to a departmental staff association approved by the



19. The Federation has also negotiated an agreement which contains provision for unilateral access to arbitration. A decision by the arbitrator will be treated as though it were an agreement between the two sides but the Secretary of State, with the concurrence of the Chancellor of the Exchequer, will have the power to override it.

M. White

# staff representation

steering committee

A/0901

Ext 2469

20 August 1984

1 per person

Dear Colleague

## Consultation Exercise on the Formation of The Government Communications Employees' Federation

### A INTRODUCTION

1. The method which will be followed in the consultative exercise was described in SC/N/03 of 13th July. The exercise is divided into 2 stages, both lasting 4 weeks. The first stage is to invite comments and general discussion on the proposals and the Constitution to enable the Steering Committee to present Staff with a definitive Constitution for the second stage.
2. Meetings will be held throughout the UK to enable all Staff at Headquarters and Home Stations to discuss the proposals with members of the Steering Committee and to make their views known. Similar meetings will also be held at the major overseas sites (Cyprus, Hong Kong, Ascension). The dates and times of meetings will be announced locally. The Steering committee will also welcome written comments, which should be sent to the Secretary, P Duffy, at the above address by Friday, the 21st of September.
3. The second stage will consist of a referendum on the acceptability of the definitive Constitution to Staff. The referendum will not commit Staff to joining the Federation.

B EFFECTIVENESS AND INDEPENDENCE

4. At the meeting of the 9th of May which elected the Steering Committee, the Committee was instructed to report on whether the Federation could be effective and independent.

5. The effectiveness of the Federation will depend to a large extent on the members. The Committee's view is that the Federation could be at least as effective as the trade unions, and in some respects, more so. An agreement for unilateral access to arbitration would enhance the Federation's effectiveness. We urge most strongly that the Federation negotiate to secure such an agreement at the earliest date.

6. Although we have not recommended that the Federation employ full-time paid officials, this option is available if the members so wish and the Federation is financially able to afford them.

7. Official side gave an assurance that the staff association would be independent of management, subject to the provisos that membership should be limited to GCHQ Staff and that the association should have no affiliations outside GCHQ. It will be for members to demonstrate their independence.

8. DESPITE THE WORDING OF GN 100/54 AND OPTION A, the Committee have NO INTENTION OF SUBMITTING THE CONSTITUTION TO THE DIRECTOR FOR APPROVAL. The 2 factors of most concern to the Director - no outside affiliation and membership restricted to employees of GCHQ - have been taken into account. There is not a "no strike" agreement explicit or implicit in the Constitution. Such an agreement might be exchanged for other benefits, which could include unilateral access to arbitration. We propose that the Federation apply for negotiating rights on behalf of Staff at GCHQ. Negotiating rights could be viewed, if need be, as fulfilling the approval requirement.



9. Legally the Federation will be a trade union. We suggest that the Federation should register with the Certification Officer and later seek certification as an independent trade union under the Employment Protection act 1975.

## C STRUCTURE

10. The Committee have sought to devise a structure coupling a central organisation for the day-to-day work of the Federation with a flexible system which will allow the members of the Federation to play as large a role as possible. Members will be given every opportunity to influence policy. Wherever possible, elections and votes will be by secret ballot.

11. There will be a 16 seat General Executive Council (GEC) plus a Chairman and Secretary, all elected by secret ballot of the membership. We expect that the Chairman and Secretary, in the first instance, will need to work on full facility time. The GEC will be responsible for the day-to-day running of the Federation, reaching or ratifying all agreements with management and ratifying all constitutions of other committees. The GEC will co-ordinate all Federation activity.

12. The GEC will need to establish standing committees and, if necessary, sub-committees, to look after specific topics such as Home Stations, Overseas Stations, Health and Safety, Shiftworking, etc, to help the GEC to do its job. These committees could co-opt advisers, but it will be for GEC members of the committees to advise the GEC.

13. The membership will be divided into 4 occupational sections as listed in appendix A based on communities of interest. The approximate percentage of staff in each section is as follows:-

Section 1 - 37%; Section 2 - 20%; Section 3 - 33%; Section 4 - 10%

## D DRAFT CONSTITUTION

21. A great deal of effort has been put into formulating a structure for the Federation and drafting a constitution. The Steering Committee decided to prepare only the main constitution of the Federation and not a constitution for every committee or to recommend specific arrangements for the Conference. As the GEC will be democratically elected by the whole membership, the Committee decided that it would be best to allow the first GEC to draft model constitutions for all other committees. They will also make arrangements for a conference when they have a better idea of numbers and the financial burden this would impose.

22. The Constitution has been vetted by solicitors with experience in the labour relations field. Any amendments which may be made in response to the consultation exercise will necessitate the Constitution being re-vetted before a definitive document can be offered to Staff in the referendum.

23. The following provides additional information on various sections of the Constitution and should be read in conjunction with it.

### I TITLE

24. In view of the connotations attached to the words "Staff Association" and "Trade Union" and as the organisation will be a Federation of the Sections, having considered many alternatives the Committee finally decided upon "THE GOVERNMENT COMMUNICATIONS EMPLOYEES' FEDERATION".

### III OBJECTIVES

25. The objectives, which are general principles, are designed to give the Federation adequate scope to do its work.

#### IV ELIGIBILITY

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26. All directly employed staff will be eligible for membership without exception.
27. Associate membership will be available to certain categories of ex-GCHQ employees, principally staff who have retired from GCHQ. This facility will be back-dated to the 1st of March to cover staff who retired after the enforced removal of trade unions but before the creation of the Federation and therefore did not have the opportunity of joining the Federation as employees. The Federation will be able to represent them if they experience difficulties in respect of their employment in GCHQ.
28. In the first instance no application for membership will be rejected. The Federation must reserve the right to refuse membership to protect itself from staff who keep leaving and then rejoining.
29. Applications for membership must be accompanied by an authorisation for deduction of the subscription from salary. For full members this will be the only acceptable method of subscription payment.

#### V RESIGNATION

30. The exception in the case of special difficulty is, for example, for staff who through ill health have been reduced to half pay.

#### VI EXTERNAL AFFILIATION

31. This clause does not prevent individual members from joining external organisations, neither does it restrict the Federation from purchasing information or expertise from external organisations, including contracting with medical or legal



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experts, or commissioning special studies with academic institutions.

## VII GENERAL EXECUTIVE COUNCIL

32. A broad outline of the GEC has been given above. It will consist of a Chairman, Secretary and 16 ordinary members. There will also be a need for a competent Treasurer who will have a responsible task. The Treasurer will be appointed by the GEC so that they can obtain the best person available to fill the post.

33. As most pay negotiations take place in the Spring the Committee have timed the elections for the Autumn so as to maintain continuity. The long duration of the election, 6th of September to 1st of November, is to enable staff overseas to adequately participate in the election.

34. The Committee do not envisage staff overseas being members of the GEC as they would be unable to fulfill their duties, although there is no reason why someone returning to the UK in the near future should not stand.

35. The returning officer could be appointed externally or internally, dependent upon the cost.

36. The method of electing the GEC has been one of the most difficult issues to be resolved by the Steering Committee.

37. Staff will have one vote for Chairman and one vote for Secretary. Candidates for either post may also stand for election as ordinary members of the GEC.

38. Voting for the GEC will be by all members of the Federation, but seating on the GEC will be limited by section to ensure that all sections have a voice on the GEC whilst at the same time preventing any one section dominating the others. Provided sufficient candidates stand, each section will have a minimum of

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3 seats and a maximum of 5 as indicated in the Constitution.

39. Each Federation member will have 8 votes for ordinary members of the GEC. The majority of members may initially wish to vote for candidates from their own section, but they should also have the opportunity to vote for suitable candidates outside their section or to vote for candidates from their own Station, Division, etc. Indeed a member whose main interest is computing in the Department may wish to stand as, say, an X Division candidate. Of overriding importance, however, is the need to balance sectional interests with the need for members of the GEC to feel that they are accountable to the membership as a whole.

#### XI DISCIPLINE

40. The Federation will need to protect itself if the need arises, (and the Committee fervently hope that the need will never arise) from individuals who take action to undermine the Federation or to prevent it from doing its work. It is written to take into account natural justice, and indeed was written with this in mind several weeks before a certain High Court Judge brought this principle to the notice of certain members of the population.

#### XII SUBSCRIPTIONS

41. For the Federation to be effective and independent it must have its own sources of finance and not be dependent upon the good grace of the Department other than in the facility time which is normally made available to trade unions. It must have funds for day-to-day activities such as printing, provide some form of insurance or death benefit, pay for medical or legal advice to support members where necessary and contract for, and purchase, information necessary to represent the interests of members. A Federation without a subscription would be subject to the grace and favour of the Department and lack credibility.



## CONCLUSIONS

49. A Staff Federation in GCHQ can be viable, BUT IT WILL NOT BE EASY. The effectiveness of the Federation, ie, can it improve Pay and Conditions, will, to a great extent, depend on 2 things:-

- a) The attitude of Staff;
- b) The attitude of Ministers, the Directorate and Management.

50. On the first point, all members of the Federation must be prepared to play a part. It is no good paying your subscription and thinking that is the end of your involvement. The Federation will not run itself and each member must be prepared to make a contribution.

51. On the second point, MANAGEMENT ATTITUDES MUST CHANGE. The Directorate, Divisional Heads, Line Managers, are just as much a part of GCHQ as the most junior Staff. We are all members of the same team. GCHQ has been said to be a Department with a "ring fence" around it. WE ARE ALL INSIDE THE FENCE, and must all stand together.

52. We have designed a structure which we believe will unite members of GCHQ Staff. It will help to eliminate the divisions between grades which existed in the past and reinforce the belief that we all belong to the same team.

53. Priority targets for the Federation in its early stages will include:-

- a) To negotiate on the polygraph pilot scheme and to monitor it if the scheme is introduced.
- b) To negotiate an agreement on unilateral access to arbitration.

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- c) To negotiate benefits to Staff as a result of the "ring fence".
  - d) To obtain certification as an independent Trade Union.

By the time of the elections for the second GEC we shall have some indications of how effective and independent the Federation is and we will know whether Management's attitudes have changed. Indications so far, eg, on CST re-grading, CCO pay and Security Officers' uniforms, are that as far as Management is concerned nothing has changed since the 25th of January, but change things must, and the period of office of the first GEC will indicate whether they have done so.

54. Contrary to the propaganda in various Trade Union publications, the Federation is not planned as opposition to CCSU. It is a realistic assumption that for the foreseeable future the ban on outside trade unions will continue. Nevertheless, Staff need independent and effective representation. This can only be achieved by a strong Federation with the active support of Staff. The real alternative to a Federation is NO REPRESENTATION.

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# general notice

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GN/600/85

4 June 1985

## GOVERNMENT COMMUNICATIONS STAFF FEDERATION

1. Following the election of officials and the submission of a constitution, the Director has formally granted departmental recognition to the Government Communications Staff Federation (GCSF) with effect from 7 May 1985 and has accorded the Federation sole negotiating rights on departmental issues. Discussions will be held between the Federation and Official Side to establish the formal links.

2. The question of the recognition of the GCSF by central departments, including HM Treasury and Cabinet Office (Manpower and Personnel Office) is currently under review.



A. J. COOK  
for Establishment and Personnel Officer

1 page  
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Distribution: Standard



PERSONAL



## H M Treasury

Parliament Street London SW1P 3AG

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Direct Dialling 01-270 4569

B Moore Esq  
GCSF  
GCHQ  
Priors Road  
Cheltenham GL52 5AJ

9 November 1988

*Sam Brown*

### FRAMEWORK AGREEMENT ON CONDUCT OF STAFF RELATIONS WITHIN GCHQ

I wrote to you on 22 July enclosing revised drafts of the Framework Agreement and arbitration annex, which you subsequently confirmed were acceptable to the GCSF (your letter of 2 August refers).

2. As you know, since then it has been necessary to clear the drafts with Ministers, and I am happy to say that they are content subject to one point. Paragraphs 2, 3 and 7 of the arbitration annex as earlier drafted refer to circumstances in which Ministers might intervene, and it is stated that such intervention will be made by the Chancellor of the Exchequer with the consent of the Foreign Secretary (the "Secretary of State"). Consultation with Ministers has however indicated that they would see it as more appropriate for Ministerial involvement to be the reverse of that shown so that, for example, the final decision on whether a matter was capable of arbitration would be taken by the Foreign Secretary with the consent of the Chancellor. The arbitration annex has been revised accordingly, and I hope that you are content.

3. The Framework Agreement states that the agreed provisions will come into effect "upon exchange of letters". It seems to me that an appropriate vehicle for initiating such an exchange would be the letter of clarification which we have already agreed in draft but which I have yet to send to you formally. That letter is now attached with an additional paragraph 7, together with the Framework Agreement and the arbitration annex (the latter revised as indicated in para 2 above). The "without prejudice" labels have been removed, but if for some reason there is any difficulty in your confirming that all is now agreed, I would be glad to know at an early date.

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4. Turning now to the provisions relating to arbitration, Sir Peter Marychurch informed you in his letter of 20 December 1984 that the Government had agreed that, in the light of the special circumstances obtaining at GCHQ, unilateral access to arbitration would be included among the available procedures when management and the Federation came to negotiate on methods of resolving disputes. The terms of the arbitration agreement are intended to reflect that commitment. The agreement reaffirms that the GCSF may, as appropriate, make representations to and negotiate with the central departments. (As in paragraph 3 of the Framework Agreement, the term "as appropriate" is intended to do no more than reflect the fact that some issues are not negotiable.

5. I realise that you have concerns about the requirement that the question of what is exclusive to GCHQ should be subject to joint agreement. However, we have attempted to allay these concerns by providing in the agreement that, in reaching a final decision on whether a matter was capable of arbitration, Ministers would give a reasoned explanation for their decision. I hope you will accept that any decision against allowing a matter to go to arbitration would not be taken unless it was felt that such a course was fully justified and defensible.

6. I hope the foregoing serves to clarify matters and remove any continuing doubts you <sup>have</sup> had about the interpretation of the agreement.

7. Paragraph 10 of the Framework Agreement states that the agreement will come into effect upon exchange of letters. I would propose, therefore, that the agreement should be regarded as taking effect from the date of this letter, and if you are content perhaps you would be good enough to write to me confirming that this is acceptable to the GCSF.

Yours sincerely



J STRACHAN



## FRAMEWORK AGREEMENT ON THE CONDUCT OF STAFF RELATIONS WITHIN GCHQ

### Introduction

1. Continuous and effective operations at GCHQ are vital to the United Kingdom's national security. Integral components of these operations are the terms and conditions of service applying to GCHQ. This agreement between management and the Government Communications Staff Federation (herein also referred to as the "GCSF") sets out the principles and practices which govern the conduct of staff/management relations within the Department. Both sides recognise the need for effective methods of communication, consultation and negotiation, and these methods should be widely understood and practised in all parts of the Department.

### Aims and Objectives

2. Subject to the overriding objective of maintaining effective operations at GCHQ at all times, the aims and objectives of this agreement are:

i. to ensure that, through the GCSF, the views of the staff are taken into account on all matters which bear on their work and their terms and conditions of employment;

ii. to provide appropriate structures and procedures which will enable the processes of consultation and negotiation between GCHQ management and the GCSF to function;

iii. to allow opportunities for disagreements or grievances to be dealt with effectively and to achieve the resolution of disagreements by the processes of this agreement, recognising the special circumstances obtaining at GCHQ.

### Recognition and Representation

3. Management recognise that the GCSF is the sole body which represents members of staff employed by GCHQ. On matters relating to the terms and conditions of service of GCHQ staff which are within the authority of GCHQ management, the GCSF may consult or negotiate, as appropriate, with GCHQ management. On matters determined centrally the GCSF may make representations to or negotiate with the central departments, as appropriate. The GCSF may negotiate on those terms and conditions which apply "exclusively" to staff employed at GCHQ. On those terms and conditions of service affecting GCHQ staff which are subject to nationally determined agreements but do not apply exclusively to GCHQ, the GCSF may make representations to the central departments; it will however be open to both parties to discuss, and if appropriate negotiate, on aspects of these terms and conditions of service which are peculiar to employment at GCHQ.

## Structure

4. A Joint Consultative structure will be formed and constituted via a separate agreement.

## Provision of Information

5. The Chairman/Secretary of the GCSF will be provided with such information as is necessary to enable the Federation to carry out its role effectively.

## Security Clearance

6. Employees of the GCSF will be security vetted, at no cost to the GCSF, and, if appropriate, granted security clearances by GCHQ. Access to classified material by such employees will be permitted on a "need to know" basis. It follows that no such access will be granted to GCSF employees who are not given security clearance. The GCSF will be responsible for the safe custody of classified material entrusted to it, and will follow departmental rules and procedures in ensuring its security. Exceptionally, in any case where the principal officers of the GCSF cannot be cleared for certain information, GCHQ will notify them of this fact and pass the said information to another suitably cleared member of the GCSF, who will be required to speak for the GCSF on the matter in question.

## Facilities

7. Provision of facilities will be subject to separate arrangements to be agreed between the GCSF and GCHQ management and subject to approval by the Treasury.

## Consultation

8. Consultation on all issues affecting the conditions of service of the staff of the Department should take place at the appropriate level. Wherever possible, issues should be resolved between local GCSF representatives and line managers. In general the intention of both sides will be to resolve issues at the lowest practicable level through informal channels. These arrangements do not however preclude an individual member of staff from making representations on his/her own behalf direct to management if he/she so wishes.

## Disagreements

9. In the event of a disagreement which cannot be resolved by the process described above, the matter may be dealt with, if appropriate, in accordance with the procedures described in the Annex titled "Arbitration".





## H M Treasury

Parliament Street London SW1P 3AG

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Direct Dialling 01-270 4569

B Moore Esq  
Government Communications  
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Priors Road  
Cheltenham  
GL52 5AJ

9 November 1988

*Don Brian*

### GCHQ: REPRESENTATIONAL RIGHTS AND ARBITRATION

1. I now enclose the Framework Agreement on the conduct of staff relations within GCHQ and, as an Annex, the arbitration arrangements - both of which have been the subject of discussion and negotiation between us. I promised at the same time to let you have an agreed gloss on one or two of those provisions which have taken up most of our time in discussion.

2. Looking first at the question of representation, paragraph 3 of the Framework Agreement makes clear that the GCSF have sole representational rights for staff directly employed by GCHQ. Insofar as "domestic" matters are concerned, ie those affecting terms and conditions of GCHQ staff which are within the authority of GCHQ management, the GCSF has freedom to consult or negotiate with GCHQ management as appropriate. Whether consultation (which includes making representations) as opposed to negotiation is appropriate will depend on the particular circumstances of the case. Some issues are, of course, subject to negotiation while others are not.

3. Where issues are outside the authority of GCHQ management and are dealt with by the central departments, the GCSF may make representations to or negotiate with these departments, as appropriate. The GCSF may negotiate on terms and conditions of service which apply exclusively to staff directly employed by GCHQ, eg pay. Where terms and conditions are not exclusive to GCHQ the GCSF may make representations to the central departments. Whilst the GCSF does not have negotiating rights from the start on centrally determined terms and conditions which are applicable elsewhere in the Civil Service, this does not necessarily mean that factors may not emerge which both sides recognise are peculiar to employment at GCHQ and which, in this event, may become the subject of negotiation and separate agreements. This is essentially what is intimated in the final sentence of paragraph 3 of the Framework Agreement.



4. One final point. Once the agreement is in place we need to sort out precisely what machinery should apply in the event of a matter actually going to arbitration. Some preliminary thinking has already been put into this, but there is more work to be done and I would be glad if we could have an early word about how the matter might be taken forward.

Yours sincerely

  
J STRACHAN

## ARBITRATION ANNEX

1. Where terms and conditions of service are determined centrally and are exclusive to GCHQ staff, the GCSF may, as appropriate, make representations to and negotiate with the central departments. The intention of both sides will be to resolve in normal processes any disagreement which may arise between them; but if agreement is not possible after both sides have made their best endeavours in negotiation, and subject to paragraph 2 below, arbitration will be available at the request of either party, provided the matter under dispute concerns the emoluments (as defined below) of a group or category of GCHQ staff and provided the basic salary maximum or flat rate of the staff concerned does not exceed the maximum of the Government Communications Grade 7 Scale; if the basic salary maximum or flat rate exceeds the GC Grade 7 maximum, access to arbitration must be with the consent of both parties (if one party does not consent to arbitration it will explain fully in writing to the other party why this avenue would not be acceptable). For this purpose, the term "emoluments" includes pay, weekly hours of work, annual leave, allowances in the nature of pay, bonuses, overtime rates, subsistence rates, travelling and lodging allowances and similar terms and conditions of employment, to the extent that these are exclusive to employment at GCHQ.

2. The question of what is "exclusive" in connection with paragraph 1 above will be for joint agreement; it is envisaged that it will refer in the wide sense to matters in which the special nature and conditions of the work carried out by GCHQ is recognised and/or significant. (It is agreed by both parties that pay is "exclusive" under the terms of this agreement.) In such matters, the GCSF shall have sole negotiating rights. Should there be any disagreement over whether a matter is capable of arbitration, a final decision will be taken by the Secretary of State for Foreign and Commonwealth Affairs ("the Secretary of State") with the consent of the Chancellor of the Exchequer, and a reasoned explanation will be given.

3. The Arbitrator will be someone acceptable to both sides. The Secretary of State, with the concurrence of the Chancellor of the Exchequer, retains an express power to override the Arbitrator's decision, in which event a reasoned explanation will be given. The decision will otherwise be binding.

### **Mechanics of Arbitration**

4. The mechanics of arbitration are described in sub-paragraphs a. to g. below. They may be subject to variation with the agreement of both parties.

a. If arbitration is sought, the hearing date will be fixed to take place within 6 weeks of the date of application.

5. The Arbitrator may act as Conciliator if both sides agree that such a course is desirable. If no agreement is reached between the parties following efforts at conciliation, the arbitration shall continue.

6. The Arbitrator's decision will be released simultaneously to both parties.

7. A decision of the Arbitrator will be treated as though it were an agreement between the two sides; but the Secretary of State, with the concurrence of the Chancellor of the Exchequer, will retain an explicit power to override it, and if that power is exercised the decision will not be implemented. The Secretary of State/Chancellor will not however prevent, delay or restrict publication of the Arbitrator's decision.

8. Any amendments to this agreement will be dependent upon the agreement of both sides.





30 63  
THE GOVERNMENT COMMUNICATIONS STAFF FEDERATION

ROOM A/0904A  
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GLOUCESTERSHIRE GL52 5AJ.

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221491 (GTN 2073) ext. 2469

J Strachan Esq  
IRD  
Room 5/1  
Treasury Chambers  
Parliament Street  
LONDON  
SW1P 3AG

Your Ref:

Our Ref: SF/RR/AR/26

Date: 16 November 1988

*Pear la.*

REPRESENTATIONAL RIGHTS AND ARBITRATION

1. Thank you for your letter of 9 November on the above subject.
2. Your paragraph 7 requests confirmation that the agreement should take effect from the date of your letter. As Ministerial approval has been forthcoming I can confirm that I am content with the contents of the letter, the attached "Framework Agreement On The Conduct Of Staff Relations Within GCHQ" and its "Arbitration Annex", and am happy for the agreement to take effect from the date of your letter.
3. You also enclosed an additional letter dated 9 November, "Framework Agreement On The Conduct Of Staff Relations Within GCHQ", which explained the Changes in paragraphs 2, 3 and 7 of the arbitration annex (on which Ministers would take the final decision), the removal of the "Without Prejudice" labels and, in the unlikely event that it is used, the steps which now need to be taken to sort out the precise machinery of arbitration.
4. I have discussed these matters informally with John Pettifer and, in passing, also pointed out some small typographical errors in the documents which we took as being corrected. Some time ago your predecessor, Derek Truman, provided a list of potential arbitrators, of which we identified Professor Johnston of Herriot Watt University as a suitable candidate for closer examination. I would be grateful if Treasury would approach Professor Johnston to see if he is amenable to accepting the post of arbitrator, subject to two provisos; first, I would like the opportunity to discuss the matter with him before a

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formal decision to appoint him is taken and second, I understand from GCHQ he will have to agree to be Positively Vetted. Whatever other detailed arrangements we may settle upon should await the arbitrator's appointment as I believe it would be useful to arrive at them following a round-table discussion with the arbitrator, who will have to oversee them, to ensure he is content with the arrangements. I look forward to your comments on the above.

Yours sincerely



BRIAN MOORE  
Chairman

## EMPLOYMENT PROTECTION ACT 1975

APPLICATION FOR A CERTIFICATE OF INDEPENDENCE  
PURSUANT TO SECTION 8 OF THE ACT

To: The Certification Officer  
27 Wilton Street  
London SW1X 7AZ

Name of trade union THE GOVERNMENT COMMUNICATIONS STAFF  
FEDERATION  
Address of head or main office Room A0904A, PRIORS ROAD  
CHELTENHAM GL52 5AJ  
List No. 677T

I hereby apply for a certificate of independence on behalf of the above trade union, whose name is entered on the list of trade unions maintained under the Trade Union and Labour Relations Act 1974.

I have been duly authorised by the union to make this application on its behalf.

Signed Brian M. Moore  
Name BRIAN M. MOORE  
Office held in union CHAIRMAN  
Date 20 APRIL 1989

Note: The following should be enclosed with the application:

- The statutory fee of £225.00.
- A copy of the rules of the union currently in force.
- The annual return for ( ) required by section 11 of the Trade Union and Labour Relations Act 1974, or, if it is not appropriate to complete that return at the time of application, any available information about the finances of the union subsequent to the last return rendered under that Act.
- Any other documents which the union desires to submit in support of its claim that it is an independent trade union within the meaning of section 30(1) of the Trade Union and Labour Relations Act, 1974.

CCSU

COUNCIL OF CIVIL SERVICE UNIONS

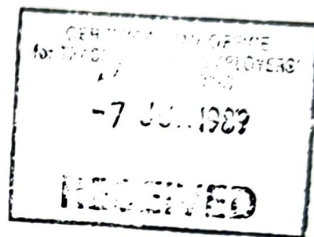
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Tel: 01-834 8393  
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P.D. JONES  
Secretary

REF: 262.31

6 June, 1989

Matthew Wake Esq  
Certification Officer  
Certification Office for Trade Unions and  
Employers' Associations  
27 Wilton Street  
London SW1X 7AZ



Dear Mr Wake

#### GOVERNMENT COMMUNICATIONS STAFF FEDERATION

With reference to the application for a certificate of independence by the above body, I am writing to register the Council of Civil Service Unions' very firm opposition to this application.

The primary reason for this opposition lies in the situation which gave rise to the Government Communications Staff Federation, following the ban on independent trade unions at GCHQ by HM Government in January 1984. The circular issued to GCHQ staff at the time (General Notice GN 100/84) contained the following paragraph:-

"4. Ministers have also decided that organisations involved in vital intelligence work should be freed as far as possible from the risk of industrial disruption. They have decided that recognition should be withdrawn from all existing unions in respect of employment at GCHQ and that accordingly it will be a condition of service that GCHQ staff will not be permitted to be members of trade unions other than a Departmental Staff Association approved by Director GCHQ. In future, disciplinary action may be taken against anyone involved in industrial action."

Even more specifically, the option form which had to be completed by all GCHQ staff contains the following words:-

"I understand, however, that I may join a Departmental Staff Association approved for the time being by the Director GCHQ".

I am sure that you will see the relevance of the term "for the time being" in the option form.





From: P H Marychurch - Director

26 HAN  
Government Communications Headquarters  
Oakley Cheltenham Glos GL52 5AJ  
Telephone Cheltenham 21491 ext

D/8788DQ/1501/29A

To all members of staff

21 February 1984

I am very conscious of the anxiety that must be in your minds as a result of the public debate about the changes announced on 25 January. In view of this I should like to clarify some of the points raised, purely in the context of issues that affect GCHQ and its staff.

#### Background to the changes

2. First, the impression has been given that the changes have been arbitrarily imposed on GCHQ by the Government. That is not so. They stem from an initiative by GCHQ management (and advice given to the Government) which has always had my full support. Let me try to define the basic problem which we face. GCHQ's work, as has been acknowledged on all sides during the current debate, is vital not only to the security of the UK but also to the security of the Western Alliance. To operate effectively - and this also has been generally acknowledged - we must be free from interruptions to our work of the kind experienced at various times between 1979 and 1981. On some of these occasions national unions, in the course of a general dispute with the Government over terms and conditions of service not specifically related to GCHQ, deliberately chose to direct action against what they identified as a very sensitive and vital agency of the Government, with the avowed intent of causing both national and international repercussions. Staff at GCHQ were thus placed in a position where their national unions were pressing them to take action which conflicted with their loyalty to the service.
3. The issue to be faced, therefore, is the fundamental conflict between GCHQ's operational responsibilities and the potential effect of national trade union membership. As long as staff are liable to a call for industrial action by trade unions, the organisation is vulnerable to disruption. Even minor or partial disruption can be damaging since our work - from station to customer - is a continuum in which we are all interdependent for its effectiveness and success.
4. In these circumstances the Government decided that the only effective way of ensuring the continuity of our work was to remove any potential conflict of loyalties by excluding national unions from GCHQ. The alternative of a no-strike agreement was considered carefully, but it was concluded that it would not give sufficient guarantee against the risk of interruption to GCHQ's activities as a result of national Civil Service disputes. The Government therefore concluded that GCHQ should be placed on the same basis as the other security and intelligence agencies, whose members are excepted from the provisions of the Employment Protection Acts and do not belong to trade unions.
5. You will have seen that the impression has been created in some areas that the Government believes GCHQ staff are or have been lacking in loyalty. This is not the case. The Government and GCHQ's management are absolutely



confident of the loyalty and professional dedication of our staff. These qualities have been demonstrated repeatedly, by the energy and enthusiasm with which people throughout the organisation have worked to provide a service of vital importance to the country.

#### The announcement

6. Why were GCHQ staff faced with a fait accompli, suddenly announced without consultation? The Government's decision on the changes was an important one, which needed first to be announced in Parliament, with those directly affected being informed as soon as possible thereafter. Moreover, there was good reason to believe that advance consultation with the unions would have been unproductive given their reactions to informal soundings in 1980 and to requests not to involve key areas in 1981.

7. One further point: the £1,000 offered to those of you who accept the new conditions of service is in some quarters being represented as a bribe. It is nothing of the sort and was never intended as such. It represents a genuine recognition that because of the special nature and critical importance of their work, GCHQ staff will lose certain statutory rights under the Employment Protection legislation which they previously enjoyed. It was thought that these rights should not be removed without any recognition and this is why the payment of £1,000 will be made.

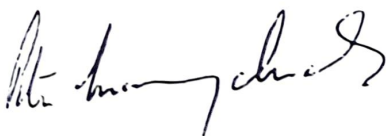
#### New Conditions of Service and consultative arrangements at GCHQ

8. Because of the concerns expressed by members of staff, I think it may help to give some further reassurance about the protection of individual rights and about consultation under the new arrangements. This will be found in the Attachment to my letter.

#### Your decision

9. GCHQ and its staff are obliged to consider a genuine issue of principle which bears on every one of us. We have put the problem to you in such a way as to ensure that each individual has the opportunity to resolve it for him or herself. I hope and believe that you will appreciate the nature of the problem and will understand that these changes are needed. Many of you have already made your decision. If you have not yet done so, bear in mind that while we now have the possibility of adapting our structure to the special needs of our work, we shall continue to be part of the Home Civil Service, particularly in relation to agreements about national pay and conditions of service. Bear in mind, too, that we shall have what I am confident will be a strong and effective staff association with a real say in our activities.

10. I am writing at this stage, when so much has been said and is still being said on all sides, in order to re-state and clarify the main issues in the hope that this will be helpful to those of you who have not yet made your decision.



P H MARYCHURCH  
Director

### The Government's Decision

1. When the Prime Minister met representatives of the national unions on 1 February, she made it clear that the Government's decisions and the offers to staff associated with them stand. The Government regards itself as bound by offers which are accepted: those who have signed Option A will receive the £1,000.

### Effects of Exclusion from the Employment Protection Acts

2. The Ministerial certificates, which exclude members of GCHQ from all the effects of the Employment Protection Acts, remove the right of appeal to an industrial tribunal (except in relation to cases of race or sex discrimination); and the new conditions of service at GCHQ prohibit membership of a national trade union. Protection on many other matters covered by the Employment Protection Acts is separately provided to all Civil Servants, including members of GCHQ, by the Civil Service Pay and Conditions Code and the Principal Civil Service Pension Scheme. For example, these still guarantee time off for public duties, maternity pay and the right to return to work, and contain the separate Civil Service redundancy provisions. If an appeal needs to be made against a decision on premature retirement or dismissal, it can be made to the independently-chaired Civil Service Appeals Board, which has heard a number of appeals from GCHQ staff in the past. This and the medical appeal boards still apply to members of GCHQ.

3. All other legislation (for example on Health and Safety, Sex and Race Discrimination) continue to apply to GCHQ.

### Other Conditions of Service

4. As explained in GN 100/84, other conditions of service (not relating to union membership or activities or industrial action) are quite unchanged. GCHQ staff are still members of the Home Civil Service, and can transfer to other government departments. We shall continue to receive the benefits of national pay settlements. Negotiations on pay for Departmental Classes, and on allowances and conditions of service specific to GCHQ, will be conducted with the Departmental Staff Association when it is formed. These will take account of GCHQ's status as a separate group within the Civil Service and its special operational circumstances. That has already been apparent in the proposals now agreed (after discussion for more than three years) for the departmental Communications Science and Technology Class.

### The Staff Association

5. The Staff Association will be established permanently to represent all members of GCHQ (industrial and non-industrial), but will be able (if staff wish) to have separate sections for the different disciplines - for example Radio, Science and Technology, Administration and Support. Its constitution will be for staff to propose, but must be acceptable to the Director (the main proviso will be no external membership or affiliation) so as to ensure that it will not come under outside influence. All GCHQ staff will be able to be members. People experienced in Whitley and Industrial trade union affairs have already been invited to help in forming the Association, but all members of GCHQ will be eligible for office. The Association will be encouraged to



negotiate on the full range of subjects covered by previous trade union arrangements, where national agreements do not apply: pay, allowances, conditions of service, procedures and equipment. Representatives of the Association will be entitled to represent and advise individuals on request in personal cases. Since all representatives will be members of GCHQ, they will be able to discuss operational aspects of the work relevant to any negotiations with management. The Department will provide accommodation, stationery, telephones, travel and other facilities (including 'facilities time') in the normal way.

6. Existing agreements made with the Departmental Trade Union Side on matters such as working practices, manning arrangements, the provision of information by management, and personnel management procedures will be honoured. Any future variations will be subject to negotiation with the Staff Association.



## Government Communications Headquarters

Room No A/0806

Oakley Priors Road Cheltenham GL52 5AJ

Telephone 0242 (Cheltenham) 21491 ext 2087

GTN Number 2073 ext

Your reference

GCHQ reference E/1089EP/1007/13 Ar lex

Date 26 January 1984

J P Windust Ery

STAFF IN CONFIDENCE

Dear Jeremy,

## DEPARTMENTAL STAFF ASSOCIATION

You will by now have received your copies of the documents relating to the changed conditions of service and will be well aware of the contents. It is not my intention in this letter to go over any of the ground covered in those documents except to draw your attention to the possibility mentioned in paragraph 5 of GN 100/84 that a Departmental Staff Association might be formed.

If staff do indeed wish to form a Departmental Staff Association it is important that it should be representative and effective and that it should command the support of individual members of staff and provide an organisation through which they can make their views known to management. I should however make it quite clear that the structure of any such Association, its function and responsibilities, arrangements for representation, etc have not been settled. We hope that members of staff will have definite views on the way in which they should be represented and will put forward proposals for discussion. Clearly, however, there is a need for someone through whom those views can be made known. You have in the past been elected by your colleagues to represent them and are experienced in discussions and negotiations with management. Such experience might be of particular value during the initial period when a Staff Association, or similar organisation, was being established. Assuming that you will elect to remain with the Department, you may wish to consider continuing as a staff representative and to play your part in drawing up proposals for submission to the Director, at least until such time as any Association is agreed and functioning. During that time you would of course be eligible for facility time etc.

If you require any additional information or wish to discuss the proposal further please do not hesitate to get in touch with E3 (Don Chidgey) or E3A (Vernon Screaton) who will be pleased to help. In any case a phone call to E3 (Ext 2798) or E3A (Ext 2079) with your decision would be much appreciated.

Yours sincerely,

 N  
16.



From: P H Marychurch - Director

K. Smith

91

Government Communications Headquarters

Oakley Cheltenham Glos GL52 5AJ

Telephone Cheltenham 21491 ext

PA (Cinip)

19 March 1984

To all members of staff

Now that we are into March and all but a few members of staff have accepted the option of staying with GCHQ under the new conditions of service, the time has come to look to the future.

2. I should first like to make it clear that I and my Directorate colleagues fully appreciate that some of you have been deeply disturbed by being faced with what is recognised as a genuine question of principle. This I readily acknowledge and I sympathise with staff finding themselves in this position. The intense public debate which has taken place as a result of the 25 January announcement has I know exacerbated the difficulties and I wish this had not been so. Let me say here that I have been deeply impressed by the way you have avoided being drawn into this public debate and by the way in which throughout you have all continued to carry out your normal work.

3. The fact remains that the important and unique character of our work are such that GCHQ needs to be insulated from external pressures. I am therefore very grateful to those who have accepted the changes necessary to achieve this. I firmly believe that those of you who have done so only reluctantly will in time come to recognise that it was the right decision to make, in both your own and GCHQ's interests.

4. I can assure those who have decided against continuing to work here that the reasons for this are understood, and that we shall do our utmost to arrange an appropriate transfer. If on further reflection you wish to change your mind and stay with us, you will be welcome to do so and your earlier decision for option B will be totally disregarded. Finally I urge those of you who have not so far expressed a preference for option A or option B to do so now. E Division is sending out reminders and duplicate option forms for this purpose.

5. As to the future, a key to the continuing well-being of the Department lies in the new Staff Association. Through this, management and staff will be able jointly to tackle whatever problems and issues face us, in the context of the special factors which govern our work and undistracted by outside pressures which should not apply to it. Discussions can be at whatever level of classification is necessary and of course the full range of subjects covered by earlier arrangements is open to the Association. The initiative in setting this up must come from you, the staff, but management is ready to give any help it can. An information notice containing some ideas and suggestions will be issued shortly.

6. My hope now is that we can all get on with the job we are here to do without the glare of publicity we have been subjected to. And, even more importantly, that we can together soon re-establish the friendly and co-operative atmosphere which has so characterised GCHQ in the past. This will be among the highest priorities of my colleagues in the Directorate and myself.

P H MARYCHURCH  
Director



# staff representation

Ar(sj)  
97

22 January 1985

## RESULTS OF REFERENDUM

1. A referendum was held to determine the views of all the staff of GCHQ and its outstations on the formation of 'The Government Communications Staff Federation' (GCSF) on the basis of a published constitution; a copy of the constitution was sent to each staff member together with a ballot paper and a covering letter from the Staff Representation Steering Committee (SRSC).
2. In earnest of the desire to ensure that the referendum should be conducted fairly, and be seen to be, the three Magistrates of the Cheltenham PSD who are employed by the department were approached jointly by the Official Side and the SRSC to oversee the conduct of the referendum as Returning Officers: this we agreed to do. The reason for not using an external independent organisation, such as the Electoral Reform Society, as a Returning Office was that the staff of such an organisation would need to be NV'D: an act not necessarily acceptable to those staff.
3. The three magistrates supervised the packing of the ballot material and the addressing of the envelopes. All spare filled envelopes and ballot papers were held by us. New entrants were subsequently issued with ballot papers up to 18 January 1985.
4. The returning officers have received copies of a number of letters addressed to the SRSC which relate to the timing of the referendum and to the covering letter SC/N/09. We will not respond to those letters as their subject matter do not fall within the scope of the Returning Officer duties remitted to us. Our concern in this matter was only that the ballot papers indicated no bias toward either of the alternative responses.
5. The SRSC has given us no advance indication of the level of support they were seeking in order to form the GCSF. Following the declaration of the result the SRSC will issue their own note on "whither the GCSF".
6. We thank DAOs of L V S Z and SAO Cheadle for undertaking the count. Mr A H G McKelvie could not attend the count due to ill health.
7. As Returning Officers we the undersigned certify that the results of the ballot gave the following percentage votes:-

Papers Returned	66.1%
Of those the votes cast were as follows:	
Yes Votes	58.1%
No Votes	41.6%
Spoiled papers	0.3%

Circulation - 1 copy per office  
All Staff to see  
2 Pages

8. The actual number of papers issued has been submitted to the Secretary, Official Side and the Secretary, SRSC on a classified document.

*Dwight S. Iliffe*

D W ILIFFE ESQ JP  
10/6N10  
4779

*P G Pennell*

P G PENNELL ESQ JP  
C/3302  
2016



38 112 23  
**THE GOVERNMENT COMMUNICATIONS STAFF FEDERATION**

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PRIORS ROAD, CHELTENHAM  
GLOUCESTERSHIRE GL52 5AJ.

Cheltenham (0242) 573906  
221491 (GTN 2073) ext. 2469

BE Price Esq. 44  
The Certification Office for  
Trade Unions and Employers' Associations  
27 Wilton Street  
LONDON  
SW1X 7AZ

Your Ref: CO/677T/4/89  
Our Ref: SF/CE/IND/08  
Date: 3 August 1989



Dear Mr Price.

**CERTIFICATE OF INDEPENDENCE - CCSU OBJECTIONS**

1. Thank you for your CO/677T/4/89 of 14 July 1989 containing the Council of Civil Service Unions' objections to the Government Communications Staff Federation's application for a certificate of independence.
2. The CCSU's objections in general relate to their obvious and understandable dissatisfaction with the removal by the Government of the national trade unions representation and membership rights at the Government Communications Headquarters (GCHQ) in 1984, an event which occurred before the formation of the GCSF and which the GCSF can in no way be held responsible for or directly associated with. The creation of the GCSF was clearly a consequence of the withdrawal of representative organisations, not its cause. However, the emotive events of January 1984 are, in the main, irrelevant to the Federation's application for a certificate of independence some 5 years later. The CCSU case unfortunately seems to rely in the main on invective, innuendo and misleading statements rather than substance. I shall nevertheless attempt to address the particular points raised by the CCSU. As many of the same points tend to arise on a number of occasions in the CCSU objection my response is inevitably somewhat repetitive.
3. **1. History.** The Government actions of 1984 are well understood and documented and have little, if any, bearing on the position of the GCSF in 1989. What is clear from



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22. 3. **Organisation and structure.** 3.1 A good deal of the CCSU comment in this section and elsewhere in their submission could cast serious doubt as to whether or not they genuinely wish to see an independent, democratic and effective union in GCHQ. As part of our application for listing as a trade union, with our annual returns to your office and in relation to this application for a certificate of independence, you have been provided with copies of the Federation's Constitution. You will note from my comments above that the original Constitution was the subject of consultation with staff and was accepted in a referendum. That Constitution has been developed in consultation with our Members with all amendments voted on at Conference. Members are at liberty to propose whatever amendments they see fit and it is for Members to decide the fate of those amendments. The record shows that some proposed amendments to the Constitution have been accepted by the Membership and others rejected. What Members may choose to place in their Constitution is their business and not that of any other body. The Constitution clearly has the agreement of Members and contains the clauses they wish it to contain. It therefore follows that what other unions may consider strange is of no consequence, as long as the Membership of the GCSF are content.

23. I have no knowledge of what may have transpired between the Prime Minister and the TUC/CCSU on 23 February 1984 and as far as I am aware the text of this has not been communicated to me. The Constitution was drafted in the light of the circumstances prevailing in 1984 with the intention of having an effective, democratic and independent representative body established permanently in GCHQ to represent staff in line with the Director's letter of 21 February 1984, referred to above. The Constitution has at no time been submitted for approval by Management, although clearly at the time of the consultation exercise and referendum they would have been aware of its contents and I believe it would insult your intelligence to imply that they had had no knowledge of this. The Constitution is not subject to Management approval or vetting.

24. In the light of the above, I do not consider it strange for the Federation to choose not to affiliate to any political or trade union organisation. I am given to understand that a number of other unions have also chosen not to affiliate to other bodies.

25. 3.2. My understanding as to why we are not a member of the Trade Union Side of National Whitley Council is clearly at variance with that of the CCSU: I understood that CCSU refused to allow us a seat. If CCSU have now changed their minds on the matter and believe that membership of the National Whitley Council would endorse our independence, and feel strongly about the matter, I look forward to their early offer of a seat on this body. If, as I believe, they are not prepared to offer the GCSF a seat on the

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surprise to me for there is no evidence to support their assertions. The reason I can be so categorical is that we are independent and effective. If we had any doubts on this score, we would not have applied for a certificate in the first place. There is, however, more than ample evidence to support our contention that we are under the control and domination of our Members and this is how it should be.

52. There is not, and never has been, any Management control of our Constitution. The evidence demonstrates clearly and supports our claim that the founding Constitution resulted from consultation with staff and was endorsed in a secret ballot. Amendments since then have come from the GEC or Members at Conference and have been openly debated and voted on. There is no evidence, because none exists, that management has any control over the Federation Constitution. I fail to see how a Conference agenda submitted and voted on by Members can be anything other than a demonstration of our democracy and independence.

53. CCSU does not have any evidence that the GCSF suffers interference from our employer. If they had they would have submitted it; obviously no such evidence exists.

54. Only the Members of the GCSF can decide its fate. Yet again I emphasise there is no Directorate veto. If GCHQ sought to usurp the rights of our Members we would challenge it. As CCSU well know the only grounds on which the Government won its case in 1984 were those of "National Security". We in the GCSF are within a national security "Ring Fence", therefore no such grounds can be used against us.

56. 5.2. There was no Management "connivance" in setting up the GCSF. The evidence supports the contention that Management wanted effective representation at GCHQ. In the Steering Committee we went to great lengths to ensure that the GCSF, as it was eventually to be, would be independent, democratic and effective, before we proposed its establishment and it was only established once the staff at GCHQ had been balloted.

57. I am surprised that CCSU did not choke on the comment regarding breakaway unions. As far as I am aware CCSU has challenged the independence of every union, no matter how motivated, set up (in what they see) in competition.

58. I believe my above response adequately demonstrates that the GCSF was only set up with the support of staff. As stated earlier I also believe that it would not have been established if there was any other effective and independent representation at GCHQ, with the ballot seeking staff approval only taking place after the House of Lords' decision to uphold the ban on external unions at GCHQ.



64. I believe I have effectively disposed of CCSU's arguments put in opposition to our application for a certificate of independence. Their objections are in the main pathetic and I have tried not to rise unduly to their vitriol. The document demonstrates their paucity of factual information on the Federation and they therefore seem to have tried to blacken the Federation with unsubstantiated "facts". It would also appear that their principle objection is to the Federation's very existence and will oppose us whether they have grounds for so doing or not. I trust the Certification Officer will give the scant credence to their objections which they deserve.

65. From the very first meeting, in May 1984, held to discuss the setting up of a staff association independence has been at the forefront of our minds. GCHQ staff have a right to such representation and the Federation strives to provide it and will continue to provide it for as long as our Members wish us to do so. We have always considered ourselves to be independent and openly stated that when we have the wherewithal to prove our independence we would apply for a certificate. There has never been any doubt that this is what we would do. We believe our negotiating record, representational rights agreement, unilateral access to arbitration, open conference arrangements and the effective control of the Federation by Members, through the appropriate constitutional mechanisms, demonstrate that the time has now come. We therefore confidently expect the Certification Officer to confirm our independence.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Brian Moore', with a long horizontal flourish extending to the right.

BRIAN MOORE

Chairman



ATTACHMENT TO  
SF/CE/IND/05 134  
H21

THE GOVERNMENT COMMUNICATIONS STAFF FEDERATION

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The Editor  
Financial Times  
Bracken House  
Cannon Street  
LONDON  
EC4 P4BY

Your Ref:

Our Ref:

SF/CON/88

Date:

21 October 1988

LETTERS TO THE EDITOR

Dear Sir

Jimmy Burns' article (20 October) on the Government Communications Staff Federation's Conference contained some errors which will mislead readers as to the position of the GCSF in representing Members' interests.

Firstly, there is no "union ban" at GCHQ. The GCSF is listed as a trade union under the relevant legislation. The article explains some of the difficulties caused by being a union in GCHQ.

Secondly, the GCSF does not have a "no strike" agreement with Management. The GCSF's Unilateral Access to Arbitration arrangements do, however, effectively remove the necessity for industrial action at GCHQ.

Thirdly, the article states "that the entire conference agenda had been screened and vetted by the management". This is not so. The subjects discussed are those submitted by Members; there is no Management veto. Your reporter may have been confused by my comments regarding national security. As the senior GCSF full-time official it is my responsibility, given the classified nature of GCHQ's work, to ensure that any Motions do not inadvertently breach the Official Secrets Act. I vetted the Agenda, with a Member in GCHQ's security division, to ensure the OS Act was complied with. I drew the attention of the Standing Orders Committee to those Motions which caused me concern. The Motions were then drafted in an unclassified way to ensure they retained the Members' original meaning.

The GCSF, as stated in the article, has nothing to hide. Our sole aim is to independently, effectively and democratically represent the interests of Members employed at GCHQ. I hope this helps to clarify the situation.

Yours sincerely

Brian Moore  
Chairman

CL 3/884/4

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## First Respondent's Bundle

### First Respondent's Bundle

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101 24

# Certification Office

Trade Unions and Employers' Associations  
27 Wilton Street, London SW1X 7AZ

Telephone Direct Line 01 210  
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Fax No : 01 210 3708  
Your ref: SF/CE/IND/09  
Our ref : CO/677T/4/89

Mr B M Moore  
Chairman  
The Government Communications  
Staff Federation  
Room A/0904A  
Friars Road  
Cheltenham  
Gloucestershire GL52 5AJ

15 December 1989

RECORDED DELIVERY

Dear Mr Moore

GOVERNMENT COMMUNICATIONS STAFF FEDERATION

As you know, I have been making inquiries into your application for a certificate of independence for the Government Communications Staff Federation. I am now writing to inform you that in pursuance of the powers conferred on me by section 8(5) of the Employment Protection Act 1975 I have determined that the Government Communications Staff Federation is not an independent trade union within the definition set out in section 30(1) of the Trade Union and Labour Relations Act 1974.

The reasons for my decision are as follows.

I should make it clear at the outset that the sole question I am required to consider is whether or not the Federation falls within the statutory definition of an independent trade union. It is no part of my function to go into wider issues, to make judgements on past events, or indeed to consider any matter beyond what may be necessary in order to arrive at and explain my determination of your application.

The statutory definition is set out in section 30(1) of the Trade Union and Labour Relations Act 1974 which, so far as is material, provides:

"independent trade union" means a trade union which -

- (a) is not under the domination or control of an employer ... and
- (b) is not liable to interference by an employer ... (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control..."

The history of this matter begins in 1984. In a circular to staff issued under cover of a letter from the Director GCHQ dated 25 January 1984 it was stated that:

"4... it will be a condition of service that GCHQ staff will not be permitted to be members of trade unions other than a Departmental Staff Association approved by Director GCHQ.

5. Although GCHQ staff will not be permitted to belong to any existing trade unions they may wish to form a Departmental Staff Association to represent their views and look after their interests. The precise form of the Association would be for staff to consider and make proposals for approval by the Director...".

In subsequent correspondence from GCHQ management concerning the early formation of a staff association it was stated that "Its constitution will be for staff to propose, but must be acceptable to the Director (the main provisos will be no external membership or affiliation) so as to ensure that it will not come under outside influence ...". A first meeting of representatives to discuss a constitution for the staff association was held on 9 May 1984. Discussions continued for a considerable period and the constitution was finally completed in the Spring of 1985. In a staff notice dated 4 June 1985 management announced that following the election of officials and the submission of a constitution recognition had been given to the Federation.

It is to be noted that the Federation's constitution met, and continues to meet, the main "provisos" stipulated by management. By Rules 4 and 5, membership is restricted to persons employed at GCHQ and those who retired from GCHQ after 1 March 1984; and Rule 13 says that the Federation shall not affiliate to any political or trade union organisation.

From the beginning much material assistance was provided by management and such assistance continues to be provided. In addition to the provision of some very limited free office-accommodation and use of internal telephones, it is of particular significance that the Chairman, Secretary and Assistant Secretary of the Federation are GCHQ employees on paid, full-time secondment to the Federation. They are dependent on management for their continued employment. In addition, two full-time members of GCHQ staff are on paid full-time secondment to provide clerical support. Given its relatively small size and limited resources, there can be little doubt that any withdrawal of such facilities and support would put the Federation in very considerable difficulty.

The vulnerability arising from this degree of support from management is enhanced by the special nature of the Federation as a single-employer organisation dealing with work sites and information to which access is very strictly controlled for reasons of national security. It seems clear therefore that any withdrawal of management co-operation and goodwill would make it difficult for the Federation to operate effectively.

It can be argued that although the Federation is relatively small and has only modest resources, much the same might be said of other small trade unions and staff associations, some of which have been granted certificates of independence. It is also fair to say that my inquiries revealed no evidence of any kind to suggest that the provision by GCHQ management of supporting facilities and assistance has resulted in or been accompanied by management interference in the day-to-day running of the Federation. I am in no doubt that the officers of the Federation would not be amenable to such interference. Indeed, within certain parameters and constraints to which I shall return, the Federation appears to function in much the same way as many other small trade unions.

I am inclined to summarise the points mentioned thus far by saying that the Federation appears to function reasonably effectively on a day-to-day basis, but



with management support - financial and otherwise - of a kind which must inevitably give rise to some questions about its independence within the statutory definition of that term. However, for reasons to which I shall now turn, I do not think it is necessary for me to come to a final view on those questions.

I say this because in my view there is a fundamental over-riding constraint on the Federation which is crucial in determining the application. It is on record in a number of documents, but is conveniently summarised in the staff circular of 25 January 1984 from which I have already quoted. It is clear from that circular that it is a condition of service of every employee of GCHQ that they are not permitted to be members of trade unions other than a Departmental Staff Association approved for the time being by the Director GCHQ. I have seen the current conditions of service of GCHQ staff which reflect that requirement. The Federation appears to continue to function subject to the approval of the Director. It would seem to follow that withdrawal of that approval would automatically make continued membership of the Federation incompatible with those conditions of service.

It is evident, therefore, that the Director has at his disposal a very powerful sanction against independent action by the Federation on certain issues, should he ever choose to use it. You sought to persuade me that the Federation had been established permanently and that approval to the constitution, once given, could not be withdrawn. So far as I need to reach a decision on that argument, I am not persuaded by it.

It is not necessary for me to speculate about the likelihood of developments which might at some future date conceivably lead the Director to threaten, or even to decide, to withdraw his approval from the Federation. The Court of Appeal has held that if a trade union is vulnerable to, or exposed to the risk of, interference by an employer tending towards control it is not independent (Squibb UK Staff Association v Certification Officer, 1978).

I have concluded that the Federation is vulnerable in this way. Given the basic constraint under which it operates, and the power of the sanction behind that constraint, the Federation cannot in my view be said to be independent within the meaning of the statutory definition. I am therefore unable to grant your application for a certificate of independence.

Under section 8(9) of the Employment Protection Act 1975, a trade union aggrieved by my refusal to issue it with a certificate may appeal to the Employment Appeal Tribunal.

Yours sincerely

M WAKE  
Certification Officer





From the Director: J A Adye

Government Communications Headquarters

Priors Road Cheltenham GL52 5AJ

Telephone 0242 (Cheltenham) 221491 ext

GTN 3073

CERTIFICATE

D/7527DQ/1101/21

11 DEC 1991

9 December 1991

B J Moore Esq  
Chairman  
GCSF  
A/0902  
Oakley

*Dear Brian,*

**CERTIFICATE OF INDEPENDENCE**

In your letter of 16 October you sought views on three matters which you and the GCSF's Counsel see as needing clarification in order to allow your appeal to the Employment Appeals Tribunal for a Certificate of Independence to proceed.

2. Your first question concerned the evidence given on 8 February 1984 by the Secretary of State for Foreign and Commonwealth Affairs and the Secretary of State for Employment to the House of Commons Employment Committee. The passages which you quoted, together with the statements made by the Secretaries of State earlier in the proceedings, make it quite clear that HMG's intention in this respect was to ensure that the staff at GCHQ should not again be subject to pressures from national unions which might give rise to conflicts of loyalty or lead to interruption or disruption of operations. To this end, the Government introduced changes in conditions of service which ensured that negotiations on Departmental issues would be carried out only by staff representatives answerable to the staff of GCHQ and to no-one else.

3. This, in turn, ensured that staff representation at GCHQ would be carried out independently of the national unions. That remains the Government's policy.

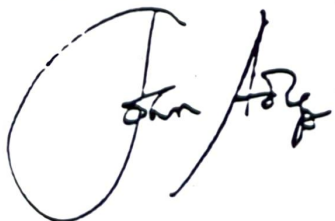
4. The Government also regards it as important that the GCSF should continue to be effective in representing the interests of GCHQ staff. This may involve the Federation in taking a line which is different from management's on conditions of service and other matters which affect members of staff. I, as Director, recognise the value of such an independent contribution.

5. Your second question related to the statement in my predecessor's letter to staff of 21 February 1984 that the staff association would be established permanently. It was envisaged in 1984, and remains the Government's intention, that a staff association would be a permanent feature of staff relations at GCHQ for as long as the staff of GCHQ wished.

6. As you are aware, certain provisions were introduced prior to the establishment of a staff association which had the effect of ensuring that external influence could not be brought upon the staff of GCHQ. Were these conditions to be breached by the GCSF, it is conceivable that action would be taken which resulted in withdrawal of official recognition, facilities and support. Moreover, it would be possible for HMG, for whatever reason, to change the conditions of service of GCHQ staff in such a way as to prohibit them from joining or continuing to belong to the GCSF.

7. These factors mean that I cannot give an assurance that the GCSF will exist for all time. However, on the basis that there is no breach of the provisions aimed at preventing external influence being brought to bear on GCHQ staff, and in the absence of a fundamental change of Government policy with respect to arrangements for staff representation at GCHQ, I can confirm that it is the Government's intention that the GCSF should continue to exist for as long as the members of staff of GCHQ wish. As Director, I remain convinced that the retention of an effective in-house staff association is in the best interests both of GCHQ and its staff.

8. Your third question related to whether the Certificates signed by the Foreign Secretary on 25 January 1984 have the effect of preventing the GCSF from following any part of the process involved in seeking a Certificate of Independence. You will wish to seek legal advice on this matter but I can tell you that our understanding is that there is no bar to your pursuing the GCSF's case for a Certificate of Independence before the Employment Appeal Tribunal in accordance with the advice which the Certification Officer gave in his letter to you of 15 December 1989.

Yours sincerely  


J A ADYE